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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

13 CR 368 (DLC)

5 VLADIMIR KATS, a/k/a "Ragnar,
6 MARK MARMILEV, a/k/a "Marko,"
a/k/a "Mark Halls",

7 Defendants.
8 -----x

9 New York, N.Y.
10 June 6, 2013
12:52 p.m.

11 Before:

12 HON. DENISE COTE

13 District Judge

14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
18 SERRIN A. TURNER
19 ANDREW D. GOLDSTEIN
CHRISTINE MAGDO
KEVIN MOSLEY
Assistant United States Attorneys
20
21 FEDERAL DEFENDERS OF NEW YORK
Attorney for Defendant Vladimir Kats
CHRISTOPHER FLOOD
22
23 JAMES R. FROCCARO, JR.
Attorney for Defendant Mark Marmilev
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d669katc

(In open court; case called)

THE DEPUTY CLERK: Is the government ready to proceed?

MR. TURNER: Yes, your Honor. Good afternoon.

Serrin Turner for the government. With me at counsel table are AUSA Andrew Goldstein, AUSA Christine Magdo, and Special Assistant U.S. Attorney Kevin Mosley.

THE DEPUTY CLERK: For the defendant Vladimir Kats, are you ready to proceed?

MR. FLOOD: Yes, your Honor. Good afternoon. Christopher Flood, Federal Defenders of New York, on behalf of Mr. Kats who is presently seated.

THE DEPUTY CLERK: For the defendant Mark Marmilev, are you ready to proceed?

MR. FROCCARO: Yes, your Honor.

James Froccaro for Mr. Marmilev, who is here, your Honor.

THE COURT: Mr. Froccaro, I think this is your first appearance in this case; am I right?

MR. FROCCARO: It is, your Honor. That is correct.

THE COURT: Good. You've filed a notice of appearance?

MR. FROCCARO: I have, your Honor. It's on ECF.

THE COURT: And we don't yet have a schedule in this case other than for a conference that will be coming up in -- I think August 9 at 10:30. And at that time if at all possible

d669katc

1 we'll be setting an additional schedule in this case.

2 MR. FROCCARO: Yes, your Honor.

3 THE COURT: Thank you.

4 And I need to arraign the defendants on the
5 indictments in which they are actually named. I did not have
6 copies of S3 and S4 at the time of the initial arraignment and
7 so I arraigned the defendants under an indictment 13 CR 358.

8 I now understand that at that time apparently each of
9 the defendants had a superseding indictment that named them and
10 them alone in front of them. So no doubt I was the only one
11 confused. But just to make sure that the record is clear and
12 that there has been an appropriate arraignment on the
13 indictment that actually is the most current charging
14 instrument as to each defendant, I'd like to just redo the
15 arraignment.

16 So, three questions. Do you have a copy of the
17 indictment? And I'm going to give you the correct number of
18 what I understand in each case. Do you wish me to read it to
19 you? And how do you plead, guilty or not guilty?

20 So let me start with you, Mr. Kats, if you could
21 please stand.

22 Mr. Kats do you have a copy of indictment
23 S3 13 CR 368.

24 MR. KATS: Yes, I do, your Honor.

25 THE COURT: Do you wish me to read it to you?

d669katc

1 MR. KATS: No.

2 THE COURT: How do you plead, guilty or not guilty?

3 MR. KATS: Not guilty.

4 THE COURT: Thank you. You may be seated.

5 And Mr. Marmilev, if you could please stand.

6 Do you have a copy of the indictment S4 13 CR 368?

7 MR. MARMILEV: Yes, I do.

8 THE COURT: Do you wish me to read it to you?

9 MR. MARMILEV: No. Thank you.

10 THE COURT: How do you plead, guilty or not guilty?

11 MR. MARMILEV: Not guilty.

12 THE COURT: Thank you.

13 Thank you so much everyone for participating in that.

14 We had an agreement from last time, and I'm sure you're aware
15 of this, Mr. Froccaro, that we would be excluding time from the
16 date of that conference until our conference date in August.

17 And during our last conference there was also a representation
18 from the government with respect to -- sorry. I'm trying to
19 find my notes from that last appearance, a schedule for
20 production of discovery material. And I think the government
21 expected -- my notes are less than clear -- to produce
22 discovery by June 21.

23 I'll take a report from the government.

24 MR. TURNER: Yes, your Honor. As to discovery, what
25 we have discussed with the defendants, and what we meant to

d669katc

1 represent at the original conference, is that we have a
2 voluminous amount of material that was obtained prior to the
3 May 24 takedown. And that material we believe we will be able
4 to produce and we plan to produce as of June 21.

5 In addition to that, on the day of the takedown there
6 were many servers seized, documents and other evidence seized
7 in multiple countries around the world. That is going to take
8 a while to trickle in from those various countries. What we've
9 told the defendants is that we will plan to produce that on a
10 rolling basis as promptly as possible as we get it and as we
11 process it. But as of now we cannot -- we don't know
12 specifically when all of that will be received and be able to
13 be produced.

14 THE COURT: Fine. So, I know the government will keep
15 defense counsel apprised with respect to the production on a
16 rolling basis of material that's come into your possession
17 since the first court appearance of these defendants. And any
18 defendant, obviously, has an opportunity to discuss the
19 production schedule with the government and if they're unhappy
20 with it to write he a short letter and I'll hold a conference
21 and address any disputes.

22 MR. TURNER: One other item, your Honor. In terms of
23 the original indictment, because the defendants did not
24 actually have access to that on the day they were originally
25 arraigned, the government thinks it would be prudent to arraign

d669katc

1 them again on that indictment today. That indictment was under
2 seal on the day of the takedown. The Court's unsealing order
3 provided for it to be unsealed the following Tuesday. So it
4 was not in their possession at the time of the original
5 appearance.

6 THE COURT: This is a unique set of circumstances. So
7 I had something I thought was in the defendants' hands and they
8 had something that no doubt they thought I was holding.

9 MR. TURNER: It appears that way, your Honor.

10 THE COURT: Okay. So let's figure out what is the
11 current charging instrument that the government would proceed
12 to trial on with respect to each of these defendants. Is it
13 the underlying indictment or is it the superseding indictment I
14 just arraigned them on today?

15 MR. TURNER: It would be the underlying indictment,
16 your Honor.

17 MR. FROCCARO: Just so I'm clear is that the
18 two-defendant indictment?

19 THE COURT: No.

20 MR. FROCCARO: What indictment is that? Because I
21 don't know that I have seen that one.

22 THE COURT: It is an indictment --

23 MR. FROCCARO: Their own indictment? It was their own
24 individual indictment?

25 THE COURT: No. There is an indictment 13 CR 368.

d669katc

1 That is the parent indictment.

2 MR. TURNER: Correct, your Honor.

3 THE COURT: There are superseding indictments. Each
4 one of those has an S in front of it. S1, S2, S3. I have no
5 idea how many Ss.

6 We arraigned each individual defendant here today on
7 the superseding indictment that names them and them alone.

8 The government is now requesting that I arraign each
9 of these two defendants on the parent indictment, 13 CR 368.

10 So have you provided each defendant with a copy of
11 13 CR 368 today?

12 MR. TURNER: Yes, I have, your Honor.

13 THE COURT: So would each defendant please stand.
14 Have you received a copy of 13 CR 368, Mr. Kats?

15 MR. KATS: Yes, I did, your Honor.

16 THE COURT: Do you wish me to read it to you?

17 MR. KATS: No, your Honor.

18 THE COURT: How do you plead, guilty or not guilty?

19 MR. KATS: Not guilty.

20 THE COURT: Thank you.

21 And Mr. Marmilev, have you received a copy of
22 13 CR 368?

23 MR. MARMILEV: Yes.

24 THE COURT: Do you wish me to read it to you?

25 MR. MARMILEV: No.

d669katc

1 THE COURT: How do you plead, guilty or not guilty?

2 MR. MARMILEV: Not guilty.

3 THE COURT: Thank you.

4 Anything else to do?

5 MR. TURNER: Not from the government, your Honor.

6 Thank you.

7 MR. FLOOD: Nothing from Mr. Kats, your Honor. Thank
8 you.

9 THE COURT: Again, unique experience. At least for
10 me. Perhaps for several of us.

11 MR. FROCCARO: Us as well, Judge.

12 THE COURT: Okay. Good. Thank you.

13 (Adjourned)

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